

HIGH COURT OF JAMMU AND KASHMIR

AT JAMMU

Rest.(C) No. 16/2008 in CIA No. 26/1999

Date of order: 07.12.2012

Collector, Northern Railways & Anr. v Sansar Chand & Ors.

Coram:

Hon'ble Mr. Justice M. M. Kumar, Chief Justice

Appearing counsel:

For the appellant(s)/petitioner(s) : Mr. H. A. Siddiqui, AAG
For the respondent(s) : Mrs. Sindhu Sharma, Adv.

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| 1) | Whether approved for reporting
in Press/Media | : | Yes/No |
| 2) | Whether to be reported in
Digest/Journal | : | Yes/No |
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M. M. Kumar, CJ

Rest.(C) No. 16/2008

1. This is an application seeking restoration of CIA No. 26/1999, which has been dismissed for non prosecution vide order dated 21.02.2003.

2. The parties are *ad idem* and have stated that the application be allowed. Accordingly, the appeal is restored to its original number. Both the learned counsel agrees that the same be taken up for consideration. Accordingly, appeal is taken on board.

CIA No. 26/1999

3. The instant appeal by the Officer of the Northern Railway under Section 52 of the Jammu and Kashmir Land Acquisition Act, 1934 (for brevity 'the Act') is directed against judgment and decree

dated 24.05.1999 rendered by the learned District Judge, Udhampur enhancing the compensation of the acquired land belonging to the respondents.

4. **Facts:-** For construction of Railway link between Jammu and Udhampur, land measuring 11 Kanals 11 Marlas situated in Village Mansu Tehsil Udhampur was notified for acquisition under Section 4(1) of the Act on the basis of a requisition sent by the Deputy Chief Engineer. The objections under Section 5(A) of the Act were called which was followed by issuance of notifications under Section 6 and 7 of the Act on 25.11.1983. Eventually, the Collector announced the award on 07.01.1989. The basis of the award was report dated 12.12.1985 sent by Tehsildar Udhampur disclosing the market rate of the land in Village Sayal Salain to be Rs.20,000/- per kanal and Village Karlal Kangro at Rs.25,000/- per kanal. However, the aforesaid rates were not accepted being irrelevant. In Village Karlal Kangro through an other award land was acquired at the rate of 15,000/- per kanal for cultivable land, Rs.12,000/- per kanal for uncultivable land and Rs.10,000/- for gair mumkin land. The Collector made the aforesaid award as the basis for assessing

the market value alongwith some other allied matters. He then proceeded to determine the market rate of the land in question. The Collector determined the market rate as follows:-

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| “1. | Cultivable land | Rs. 15,000 per kanal |
| 2. | Uncultivable land | Rs. 12,000/- per kanal |
| 3. | Gair mumkin land | Rs. 10,000/- per kanal” |

5. The land of the respondents was assessed @ Rs. 15,000/- per kanal which was calculated at Rs.1,73,250/-, Jabrana @ 15% worked out as Rs.25,987.50/- which also stood granted and a total compensation of Rs.1,99,237.50/- was granted vide award dated 07.01.1989.

6. The land owner-respondents did not accept the rate of interest as awarded by the Collector and invoked Section 18 of the Land Acquisition Act. They approached the Collector with a prayer for making a reference to the learned District Judge for determination of the market value of the acquired land. The learned District Judge framed the following questions for adjudication:-

- “1. Whether the valuation award by the Collector belonging to the petitioners has not been correctly assessed, if so, what was the market value of the land and the property acquired on the date of notification? OPP.
2. To what relief the petitioners are entitled to? OPP”

7. In order to determine the market value of the land at the time of issuance of notification under Section 4, the learned District Judge considered various factors which are statutorily recognized by sub section 1 of the Section 23 of the Act and the irrelevant factors which are not to be taken into account. Accepting that the market rate is the price that a willing purchaser would pay to the seller for the property with all its advantages and excluding however potential possibilities or any advantage due to carrying out of any scheme for which the property was being acquired. According to the learned District Judge the guiding principle which has been approved by Hon'ble the Supreme Court would be to stand in the shoes of hypothetical willing vendor who would offer the land and a purchaser willing to buy as a prudent man would behave in normal market condition. The learned District Judge also placed reliance on the observations made in the case of ***Spl. Tehsildar Land Acquisition Vishakapatnam v. A. Mangala Gowri, AIR (1992) SC 666*** and then proceeded to create basis for assessing the market value on the principle that sale instances akin to the time of acquisition would be the best proof of

assessing the market value. It went further in search of the principle that if there are no sale instances akin to the time of the acquisition of the land in the vicinity of the acquired land then the sale instances of the land in the neighbourhood at the time of the notification would supply the data to assess the market value. The learned District Judge also made a reference to the observations made in para 4 of the judgment of Hon'ble the Supreme Court in the case of ***Chimanlal Hargovinddas v. Special Land Acquisition Officer AIR (1988) SC 1652*** wherein various factors have been listed which must be etched on the mental screen of the reference Court. The aforesaid para reads as under:-

- “1. A reference u/s 18 is not an appeal against the award and the court cannot take into account the material relied upon by the land acquisition officer in his award unless the same material is produced and proved before the Court.
2. So also the award of the land acquisition officer is not to be treated as a judgment of the trial court open or exposed to challenge before the court hearing the reference. It is merely an offer made by the land acquisition officer and the material utilized by him or making his valuation cannot be utilized by the court unless produced and proved before it. It is not the function of the court to sit in appeal against the award, approve or disapprove its reasoning or correct its error or affirm, modify or reverse the conclusion reached by the land acquisition officer as it if were an appellate court.
3. The court has to treat the reference as an original proceedings before it and

determine the market value afresh on the basis of the material produced before it.

4. The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.”

8. The learned District Judge then proceeded to consider the sale instances produced by both the parties and then concluded that the relevant date for determining the market value of the acquired land is 25.11.1983 when notification under Section 6 was issued (under J&K Act). It has been concluded that in the vicinity of the Village where the land in question has been acquired, no evidence of sale transaction has been brought on record. The learned District Judge then made a reference to the observations made by Hon’ble the Supreme Court in the case ***of Gulzara Singh v. State of Punjab (1993) 4 SCC 245*** to carve out a principle that if the sale transaction of the land in the vicinity of the acquired land are not available then the sale instances of the land in the neighbourhood that is possessed of the same or similar potentials or fertility or other advantageous features could furnish the basis to determine just and fair market value on the

premises of a hypothetical willing vendee who would agree to purchase the land as a prudent man in normal market conditions and proceeded to hold as under:-

“Though the sale deeds relied upon by the petitioners as example of market value have not been executed in the relevant year, yet there being no other sale deed available, can be taken into consideration. Regarding the conditions of the land sold and the land acquired, it has come in the evidence of the witnesses of the petitioners that the land acquired is irrigated land being irrigated from a water spring where as the lands sold are dry lands. Regarding the land sold vide sale deeds EXPWBL and EXPWTM it has been contended by PWs Todar Mal and Bansi Lal that these lands have been sold for the purpose of constructing a house and the land sold vide sale deed EXPWBL is at a distance of 80 feet from the road and surrounded by many houses but there is nothing in their evidence to indicate the location of the land acquired and for that matter at what distance the land acquired is situated from the village habitat. The land transaction EXPWTM and EXPWBL seems to be located within village habitation. The third sale about which PW Mani Ram has testified, pertains to the land sold on 12-8-87 at the rate of Rs. 90,000/- per kanal. PW Mani Ram in cross examination has admitted that the land sold by him is at a distance of $2/3$ jareeb from village habitat whereas the lands acquired is at a distance of $10/15$ jareeb from there. So taking the cue from the petitioner's witness PW Mani Ram, in my view the market rate of the land acquired can be assessed and while doing so it must be kept in mind that the sale transaction took place about $2\frac{1}{2}$ years after the relevant date. According to this sale deed the rate of land was Rs. 90000 per kanal and only $5\frac{1}{2}$ marlas of the land was purchased for Rs. 23750/- through this sale deed. Keeping in view the distance from the village habitat of the land sold through this sale deed and the distance of the acquired land there from, the market rate can be worked out by proportionately reducing the rate at which the land stood

sold through the said sale deed. It it was Rs. 90,000/- per kanal at a distance of $\frac{2}{3}$ jareeb from village habitat, it could not be more than its $\frac{1}{4}$ that a distance of $\frac{10}{15}$ jareeb from village habitat. Therefore at that distance the market rate of the land sold could be Rs. 2250/- per kanal. Some margin has also to be given to the quantity of the land sold and quantity of the land acquired. The land sold through said sale deed was $5\frac{1}{2}$ marlas, a small piece of land where as land acquired consists of 11 kanals 11 marlas. So leaving a margin of Rs. 2500/- per kanal for the development of the land, if the same was to be sold in such small portions, the market rate will work out to be Rs. 20,000/- per kanal and this rate of land seems to be fair and just at the time of acquisition to the land, which took place about $2\frac{1}{2}$ years before the said sale transaction.”

9. On the basis of the aforesaid findings, the land owner-respondents were held entitled to receive compensation at the rate of Rs.20,000/- per kanal in accordance with their respective shares and interest in the land acquired. They were also held entitled to interest @ 6% per annum from the date of their deportation and solatium at the rate of 15% thereon. The learned District Judge further directed that the amount, if any, already received by them was to be taken into account for working out the balance compensation.

10. Mr. Siddiqui, learned Additional Advocate General has argued that the basis of assessing compensation adopted by the reference Court is not correct because the sale instance belong to entirely a

different area. According to the learned counsel the sale deeds EXPWBL and EXPWTM would not provide a safe basis. He has maintained that the sale deed EXPWBL would show that one Parmanand sold 7 marls of land situated in village Karlal Kangro to PW Bansi Lal for a sum of Rs.35,000/- and the rate of the land projected by the sale deed is Rs.5,000/- per marla which comes to Rs.1,00,000/- per kanal. The sale deed was executed on 29.12.1986 whereas the relevant date admittedly is 25.11.1983. The other sale deed EXPWTM of the same village by showing the land sold by Permand was executed on 23.02.1997 which shows the similar rates. Likewise, the sale deed dated 12.08.1987 would show lesser rate and the land measuring 5 ½ marlas was sold for Rs. 24,750/- and the compensation was worked out at the rate of Rs.4,500/- per marla i.e. 90,000/- per kanal. The land sold later in the year 1987 was at a low rate then the land sold in the year 1986 which according to the learned State counsel is unbelievable situation.

11. Ms. Sindhu Sharma, learned counsel for the land owner-respondents has supported the order of the learned District Judge by submitting that the

best legal course available on the basis of evidence on record has been preferred by the learned District Judge. According to the learned counsel a well reasoned order has been questioned by the appellant on totally untenable and unwarranted grounds.

12. Having heard the learned counsel for the parties and perusing the paper book with their able assistance, I am of the considered view that the learned District Judge has rightly taken into account three sale instances which are in respect of land situated to the nearest possible distance. The learned District Judge compared the quality and nature of the land involved in the sale instances on the one hand and that of the land acquired. The learned District Judge has rightly taken into consideration various components like location of the land involved in sale instances; their smaller area of the sale and its quality. These factors are relevant consideration as has been pointed out by Hon'ble the Supreme Court in Gulzara Singh's case (supra) and the same has been rightly applied by the learned District Judge. The view taken in Gulzara Singh's case has been repeatedly followed and applied even in later judgments of Hon'ble the Supreme Court like

Jawajee Nagnathan v. Revenue Divisional Officer (1994) 4 SCC 595 and Kasturi and ors. v. State of Haryana (2003) 1 SCC 354. It is appropriate to mention that in Gulzara Singh's case Hon'ble the Supreme Court upheld the deduction of 1/3rd of the undeveloped land towards developmental charges. In that case 90 acres of undeveloped land was acquired which needed to be developed by laying roads, parks, drainage, lighting and other civic amenities. The following principles have been carved out which are discernible from the reading of para 3 of the judgment. The relevant part of para 3 incorporating the aforesaid principle is set out below:-

“It is settled law that to determine the market value of the land under Section 23(1) of the Act the sales of the land under requisition, if any, or the sales in the neighbourhood lands that possessed of same or similar potentialities or fertility or other advantageous features would furnish basis to determine just and fair market value on the premise of a hypothetical willing vendor and willing vendee. The willing vendor who would offer the land and willing vendee who would agree to purchase the land as a prudent man in normal market conditions as on the date of the notification or near about the date of the notification is the acid test.” (Emphasis added)

13. In the present case, the total area of the land acquired is 11 marlas and three sale deeds which have been made the basis for assessing the market value involved in the sale of land measuring 7

marlas, 5 marls and 5 ½ marlas respectively. It is true that when a large tracts of land is acquired the sale deed in respect of smaller pieces of land may constitute the sole basis for determining the just and fair market value. There is, however, no bar to rely on such sale deeds provide the Court applies a suitable cut because the principle of necessity would be attracted. Reliance in this behalf may be placed on the judgment of Hon'ble the Supreme Court in ***K. Vasundara Devi v. Revenue Divisional Officer (LAO) 1995 (5) SCC 426.***

14. In the present case, reduction in the price shown in the sale deed has been made on the basis that it pertains to sale of smaller areas, location and distance. It is on the basis of the aforesaid factors, coupled with the statement made by the witnesses produced by the land owners, that the price has been fixed. Therefore, the price given in the sale deed pertaining to smaller area is not the sole basis on which the learned District Judge has proceeded. He has adopted a fair method for imposing suitable cuts. It was in the aforesaid facts and circumstances that in Kasturi's case (supra) Hon'ble the Supreme Court has approved similar reduction imposed by the High

Court. Therefore, I am of the considered view that there is no ground to interfere in the findings recorded by the learned District Judge. Accordingly, the view taken by the learned District Judge is approved.

15. As a sequel to the above discussion, this appeal fails and the same is dismissed. The balance amount, if any, payable to the land owner-respondents shall be paid expeditiously preferably within a period of two months from today, failing which the land owner-respondents would be entitled to additional interest @ 9% per annum from the date the amount was due till the date the payment is made. This interest would be in addition to the interest already awarded by the learned District Judge.

16. No costs.

(M. M. Kumar)
Chief Justice

Jammu,
07.12.2012
Parshant